Proposal to Modernize the CIRO Arbitration Program

January 31, 2025

Submission to the Canadian Investment Regulatory Organization (**CIRO**)

ASSOCIATION DES BANQUIERS CANADIENS
CANADIAN BANKERS ASSOCIATION

The Canadian Bankers Association (**CBA**)[1] appreciates the opportunity to provide input on the consultation with respect to the Proposal to Modernize the CIRO Arbitration Program (**Proposal**). Below we provide our responses to the specific questions set out in the consultation.

CIRO Consultation Questions

1. **Should the Arbitration Program (Program) be extended to clients of mutual fund dealers?**

Yes, the extension of the Program supports the harmonization of the operations of investment dealers and mutual fund dealers, where appropriate. The extension may also relieve confusion for investors if all CIRO Dealer Member clients have the same available dispute resolution options and bolster investor confidence in the securities industry.

However, in terms of cost, the Proposal (Appendix B) outlines that the modernized Program would increase CIRO's operating expenses which may result in "incremental increases to dealers' membership fees." It would be helpful if CIRO could provide further details on this potential incremental increase and the basis upon which any increase will be determined (e.g., fixed amount or an amount determined based on usage of the Program?).

Moreover, one of the key expected outcomes communicated to stakeholders at the outset of the self-regulatory organization amalgamation initiative was that the efficiencies and cost savings from the proposed amalgamation "…could be achieved without disrupting the existing … regulatory fee structures."[2] We would urge CIRO to keep this expected outcome in mind when determining the fee impacts of the Proposal.

[1] The Canadian Bankers Association is the voice of more than 60 domestic and foreign banks that help drive Canada's economic growth and prosperity. The CBA advocates for public policies that contribute to a sound, thriving banking system to ensure Canadians can succeed in their financial goals.
[2] Improving Self-Regulation for Canadians: Consolidating the Investment Industry Regulatory Organization of Canada and the Mutual Fund Dealers Association of Canada (June 2020 at page 3)

2. **Should the Program remain available to 1) claims that are outside of OBSI's mandate/eligibility criteria and 2) where investors have attempted to resolve their dispute through OBSI but have withdrawn or abandoned the process, or should there be a clear rule that all claims under the OBSI limit [currently $350,000] are ineligible for the Program?**

The Program should be available for all investor claims concerning Dealer Members up to the current award limit of $500,000 so that investors have greater choice of dispute resolution mechanisms and thereby greater access to justice.

In our view, regardless of quantum the claim, in the interest of fairness and efficiency, **once an investor makes a choice of dispute resolution mechanism, the investor should not have the ability to switch forums**. Using the resources of several dispute resolution mechanisms for perceived advantage to obtain the "desired" result is an abuse of process and undermines confidence in the impartiality of the available dispute resolution processes.

Improvement in communication about the arbitration program can be undertaken by CIRO so investors can make informed choices about the available dispute resolution mechanisms. CIRO's prior Arbitration Program Working Group made recommendations in 2022, which have not been referenced in the current consultation, which reflect the need to enhance communication.[3]

3. **We propose to double the current award limit raising it to $1,000,000 and allow parties to use the Program on consent for claims above $1,000,000, in which case, their arbitration would not be limited by any set limit. Is the proposed range, between $350,000 (and potentially $500,000) to $1,000,000, appropriate for arbitration claims involving investor disputes in Canada?**

In our view, the proposed doubling of the award limit is unwarranted without further evidence that it is necessary to accommodate the reality of the quantum of losses that most successful

[3] IIROC ARBITRATION PROGRAM WORKING GROUP RECOMMENDATIONS - July 2022

claims may realistically represent. Claims in the range of $1,000,000 should be adjudicated in courts of law, where the greatest level of procedural protections, including avenues for appeal and awards of costs to the successful party, are available to both parties.

We are supportive of allowing parties to use the Program on consent for claims above the current $500,000 limit, in which case, their arbitration would not be limited by any set limit.

Finally, we would encourage CIRO to revisit the question of raising the $500,000 set limit in the future as part of a regular periodic assessment of the Program's effectiveness.

4. **Should the two-year limitation period for claims under the Program be extended and what would be the appropriate limitation period for arbitration claims in the Program?**

The two-year limitation period should not be extended. As time passes, the quality of evidence available to both parties in a dispute diminishes. Moreover, in most provincial civil jurisdictions in Canada, a two-year limitation period has been determined to reasonably balance the interests of those involved in a dispute. The Program limitation period should remain consistent with this civil standard.

5. **To address the issues of access and costs, we propose to:**
    - **fund reasonable costs of case management and mediation,**
    - **set reasonable arbitrators' fees and offer fixed fee arbitration options, and**
    - **refer unrepresented litigants to legal clinics and lawyers offering pro bono legal services.**

    Would the proposed changes effectively address the issue of costs in the Program and promote greater access to justice for parties in investment-related disputes?

While we support measures to address the issue of costs in the Program and promote greater access, it would be helpful if CIRO could provide additional details on how these cost reduction measures would be funded. As stated above in our response to Question 1, we note that the Proposal (Appendix B) indicates that these measures may result in "incremental increases to

dealers' membership fees." Again, further detail regarding this potential increase and the basis upon which any increase will be determined would be welcomed.

While dealer subsidies of case management and mediation may appear to be attractive in drawing more use of the Program, increasing case volumes should not be the objective. As indicated in the Proposal, arbitration is not about capturing case volumes:

> Given the unique aspects of the Program and its niche nature, we do not believe that the Program will ever have huge case volumes, rather its success should be measured by its effectiveness and quality of ADR tools it offers.

In our view, offering the tools and subsidizing them are different issues and should not be confused. CIRO may wish to consider the Arbitration Program Working Group's recommendation to provide a form of fee waiver to defray some investor arbitration costs particularly if the investor is impecunious as a result of registrant misconduct.[4]

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We thank you for taking the time to consider our views regarding the Proposal and trust that you will find these comments helpful. We would be pleased to discuss our comments further at your convenience.

[4] Ibid.